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# HOUSE BILL No. 1738

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-30.5.

**Synopsis:** Use of outside water resources by water utilities. Provides that a water utility may not withdraw or transfer water from a reservoir outside the utility's service territory without first obtaining a certificate of public convenience and necessity from the utility regulatory commission (IURC). Requires an applicant for a certificate to provide the following to the IURC: (1) Certain data on existing and projected customer bases and demand for water by the utility's customers. (2) Proof that notice of the application has been given to communities and water utilities affected by the applicant's proposed use of the outside water resource. (3) An assessment by the department of natural resources (department) of the effect of the utility's proposed use of the outside water resource. Allows the department to conduct certain activities and studies to prepare an accurate assessment of the proposed use of the outside water resource. Requires the IURC to hold a hearing on an application for a certificate in each county in which the outside water resource is located. Requires the IURC to consider certain factors in deciding whether to issue a certificate. Provides that the IURC shall issue a certificate if the IURC determines that public convenience and necessity require the proposed withdrawals from the outside water resource. Provides that a water utility that is issued a certificate is subject to the terms and conditions of use prescribed by the IURC. Allows the IURC to revoke, suspend, or modify a certificate under certain circumstances. Allows the IURC to adopt rules, in consultation with the department, to implement the certification process.

**Effective:** Upon passage.

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## Welch, Pierce, Koch

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January 26, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1738

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 8-1-30.5 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]:  
4       **Chapter 30.5. Use of Outside Water Resources by a Water**  
5       **Utility**  
6       **Sec. 1. This chapter applies to a water utility regardless of**  
7       **whether the utility has withdrawn from the jurisdiction of the**  
8       **commission with respect to the approval of:**  
9               (1) rates and charges; or  
10              (2) the issuance of stocks, bonds, notes, or other evidence of  
11              indebtedness;  
12       under IC 8-1-2.7, IC 8-1.5-3-9, IC 8-1.5-3-9.1, or any other statute  
13       or rule.  
14       **Sec. 2. As used in this chapter, "affected community" means a:**  
15               (1) county;  
16               (2) municipality; or  
17               (3) conservancy district established under IC 14-33;



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in which an outside water resource is located.

Sec. 3. As used in this chapter, "certificate" refers to a certificate of public convenience and necessity that:

(1) is issued by the commission under section 12 of this chapter; and

(2) authorizes a water utility to:

(A) withdraw or transfer; or

(B) construct any structures, pipelines, or other appurtenances needed to withdraw or transfer;

water from an outside water resource in accordance with the terms and conditions prescribed by the commission.

Sec. 4. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 5. As used in this chapter, "department" refers to the department of natural resources created by IC 14-9-1-1.

Sec. 6. As used in this chapter, "outside water resource" means a water resource that is located outside the service territory of a water utility.

Sec. 7. As used in this chapter, "water resource" means a reservoir that, regardless of its location, is:

(1) used; or

(2) sought to be used;

by a water utility to provide water utility service to the public.

Sec. 8. As used in this chapter, "water utility" means:

(1) a public utility (as defined in IC 8-1-2-1(a));

(2) a municipally owned utility (as defined in IC 8-1-2-1(h));

(3) a not-for-profit utility (as defined in IC 8-1-2-125(a));

(4) a cooperatively owned corporation;

(5) a conservancy district established under IC 14-33; or

(6) a regional water district established under IC 13-26;

that provides water service to the public.

Sec. 9. (a) A water utility may not:

(1) withdraw or transfer; or

(2) construct any structures, pipelines, or other appurtenances needed to withdraw or transfer;

water from an outside water resource unless the water utility first obtains a certificate of public convenience and necessity from the commission.

(b) A water utility that seeks a certificate under this chapter shall submit an application on a form prescribed by the commission. The form prescribed by the commission must require the water utility to report the following information:

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1 (1) A description of the water utility's existing service  
2 territory and any planned expansions of, or changes to, that  
3 service territory.

4 (2) A description of the water utility's existing water  
5 resources, including an identification of the areas within the  
6 water utility's service territory that are served by each water  
7 resource identified.

8 (3) Data concerning the following:

9 (A) The size of the water utility's existing customer base,  
10 broken down by class of user.

11 (B) Projections, for both the near and long term, of any  
12 increase or decrease in the water utility's customer base,  
13 broken down by class of user.

14 (C) The current demand for water by the water utility's  
15 existing customer base, broken down by class of user. The  
16 demand reported under this clause must be:

17 (i) expressed in gallons or in any other unit of  
18 measurement required by the commission; and

19 (ii) reported for such periods or intervals as required by  
20 the commission.

21 (D) Projections, for both the near and long term, of any  
22 increase or decrease in demand for water from the water  
23 utility's projected customer base, broken down by class of  
24 user. The demand reported under this clause must be:

25 (i) expressed in gallons or in any other unit of  
26 measurement required by the commission; and

27 (ii) reported for such periods or intervals as required by  
28 the commission.

29 (4) An identification of the following:

30 (A) The outside water resource from which the water  
31 utility seeks to withdraw or transfer water.

32 (B) All affected communities.

33 (C) To the extent known by the water utility, the existing  
34 uses of the outside water resource, including any use of the  
35 outside water resource by any other water utility as a  
36 source of water for the provision of water utility service.

37 (5) The amount of water, expressed in gallons or in any other  
38 unit of measurement required by the commission, that the  
39 water utility seeks to withdraw from the outside water  
40 resource and the frequency of the planned withdrawals. The  
41 water utility shall identify any anticipated variations in the  
42 amount or frequency of withdrawals that are due to:

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- 1 (A) seasonal patterns of demand;  
 2 (B) growth or reduction in the water utility's customer  
 3 base; or  
 4 (C) emergency uses.
- 5 (6) If the water utility seeks to construct any structures,  
 6 pipelines, or other appurtenances needed to withdraw or  
 7 transfer the water, the following information:
- 8 (A) A proposed schedule for the construction.  
 9 (B) Information on how the construction will be financed.  
 10 (C) Whether the water utility has sought or obtained any  
 11 permits, licenses, or other approvals required by:  
 12 (i) the federal government;  
 13 (ii) the state;  
 14 (iii) any political subdivision of the state; or  
 15 (iv) any agency of a unit of government described in  
 16 items (i) through (iii), including the United States Army  
 17 Corps of Engineers.
- 18 (D) Whether the water utility has sought or obtained any  
 19 necessary easements or rights of way from affected  
 20 landowners.
- 21 (7) Any environmental mitigation measures or conservation  
 22 practices that are planned by the water utility to:  
 23 (A) ensure the ability of the outside water resource to meet  
 24 the water needs of all affected communities and other users  
 25 of the outside water resource; or  
 26 (B) otherwise lessen the impact of the water utility's  
 27 planned use of the outside water resource.
- 28 (8) Any other information required by the commission.
- 29 (c) A water utility that seeks a certificate under this chapter  
 30 shall also submit, along with the application required by subsection  
 31 (b), the following:
- 32 (1) Proof that notice of the water utility's application for a  
 33 certificate under this chapter has been sent by certified mail  
 34 to:
- 35 (A) the executive and the legislative body of each affected  
 36 community;  
 37 (B) each water utility that uses the outside water resource  
 38 as a source of water for the provision of water utility  
 39 service; and  
 40 (C) to the extent known by the applicant, each water utility  
 41 that purchases water for resale from a water utility  
 42 described in clause (B).

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(2) An assessment prepared by the department evaluating the effect of the water utility's proposed withdrawals on the outside water resource. The department's assessment under this subdivision must include the following:

(A) An analysis of the ability of the outside water resource to meet the projected near and long term needs for water of:

- (i) the water utility seeking the certificate;
- (ii) the affected communities;
- (iii) other water utilities that use the outside water resource as a source of water for the provision of water utility service; and
- (iv) other existing or potential users of the outside water resource.

(B) An analysis of any alternative water resources available to the water utility seeking the certificate.

(C) The likely effectiveness of any environmental mitigation measures or conservation practices:

- (i) identified by the applicant under subsection (b)(7); or
- (ii) otherwise considered by the department.

(D) Any other analyses or information required by the commission in rules adopted by the commission under section 15 of this chapter.

**Sec. 10. In preparing an assessment described in section 9(c)(2) of this chapter, the department may do any of the following:**

(1) Consult with:

- (A) the water utility seeking the certificate;
- (B) one (1) or more affected communities;
- (C) one (1) or more other water utilities that use the outside water resource as a source of water for the provision of water utility service;
- (D) one (1) or more water utilities that purchase water for resale from a water utility described in clause (C); or
- (E) other existing or potential users of the outside water resource.

(2) With reasonable notice to the tenant or owner, enter upon any land or water in Indiana to evaluate the effect of the applicant's proposed withdrawals on the outside water resource.

(3) Conduct studies to evaluate the likely effectiveness or the potential impacts of:

- (A) various methods of withdrawal from the outside water

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resource; or

(B) any environmental mitigation measures or conservation practices:

(i) identified by the applicant under section 9(b)(7) of this chapter; or

(ii) otherwise under consideration by the department.

(4) Require:

(A) metering or other reasonable methods of measuring water withdrawals from the outside water resource; and

(B) the reporting of the measurements taken under clause (A) to the department.

(5) Engage in any other activity necessary to prepare an accurate assessment under section 9(c)(2) of this chapter.

**Sec. 11. (a)** Not later than thirty (30) days after a water utility submits an application under section 9 of this chapter, the commission shall conduct a hearing in each county in which the outside water resource is located.

**(b)** The commission shall send notice of the hearing by first class mail not later than ten (10) days before the hearing to the following:

(1) The department and any other state agencies having jurisdiction or an interest in the matter, as determined by the commission.

(2) The executive and the legislative body of each affected community.

(3) Each water utility that uses the outside water resource as a source of water for the provision of water utility service.

(4) Each water utility that purchases water for resale from a water utility described in subdivision (3).

(5) Other interested parties, as determined by the commission.

**(c)** The commission shall cause notice of the hearing to be published in a newspaper of general circulation in each county in which the outside water resource is located. The publication required under this subsection must occur once a week for two (2) weeks, with the second publication occurring not later than fifteen (15) days before the date of the hearing.

**(d)** The commission shall accept written and oral testimony from any person who appears at the public hearing.

**(e)** The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

**Sec. 12. (a)** Not later than sixty (60) days after the date of the

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hearing described in section 11 of this chapter, the commission shall issue an order approving or denying a certificate of public convenience and necessity under this chapter. In deciding whether to grant a certificate under this chapter, the commission may consult with:

- (1) the department;
- (2) the water shortage task force established by IC 14-25-14-2;
- (3) other state or federal agencies having:
  - (A) jurisdiction in the matter; or
  - (B) expertise in water resource management and conservation;
- including the United States Army Corps of Engineers; or
- (4) any person entitled to notice under section 11(b) of this chapter.

(b) After considering:

- (1) the application submitted under section 9 of this chapter;
- (2) the assessment of the department under section 9(c)(2) of this chapter;
- (3) any written or oral testimony received at the hearing conducted under section 11 of this chapter; and
- (4) any recommendations or concerns expressed by any person consulted by the commission under subsection (a);

the commission shall issue a certificate to the requesting water utility if the commission determines that public convenience and necessity require the proposed withdrawal or transfer of water sought by the water utility.

(c) A water utility that is issued a certificate under this chapter is subject to the terms and conditions of use prescribed by the commission and set forth in the certificate. The terms and conditions prescribed by the commission may include any of the following:

- (1) Restrictions on withdrawals of water during periods of drought or in an emergency.
- (2) Restrictions on withdrawals of water during periods of high demand from other users of the outside water resource.
- (3) Requirements for metering or other reasonable methods of measuring water withdrawals from the outside water resource.
- (4) Requirements that the water utility perform specified environmental mitigation measures or conservation practices.
- (5) Requirements that the water utility periodically report:
  - (A) the water utility's withdrawals from the outside water

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resource; or

(B) other data concerning the water utility's use of the outside water resource;

to the commission at such intervals as prescribed by the commission.

(6) Other restrictions or requirements considered by the department to be necessary and in the public interest.

Sec. 13. (a) Upon the commission's own motion, or upon the request of any of the following, the commission may hold a hearing to determine whether a certificate issued under this chapter should be revoked, suspended, or modified:

(1) The office of utility consumer counselor created by IC 8-1-1.1-2.

(2) The executive or the legislative body of an affected community.

(3) A water utility, other than the holder of the certificate, that uses the outside water resource as a source of water for the provision of water utility service.

(4) Any class of persons satisfying the standing requirements of IC 8-1-2-54.

(5) The holder of the certificate.

(b) The commission may:

(1) revoke or suspend a certificate issued under this chapter; or

(2) prescribe additional restrictions or limitations on the holder's use of the outside water resource under the certificate;

if the commission determines, after notice and hearing, that the water utility has failed to comply with the terms and conditions set forth in the certificate or that the public interest otherwise requires the revocation, suspension, or imposition of additional restrictions or limitations. An action by the commission is subject to appeal by the water utility under IC 8-1-3.

Sec. 14. A water utility that withdraws or transfers water from an outside water resource:

(1) without a certificate issued under this chapter; or

(2) in violation of the terms and conditions set forth in a certificate issued under this chapter;

commits a Class B infraction.

Sec. 15. The commission may, in consultation with the department, adopt emergency rules under IC 4-22-2-37.1 to implement this chapter. An emergency rule adopted by the

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1        **commission under this section expires on the date a permanent rule**  
2        **is adopted by the commission under IC 4-22-2.**  
3        **SECTION 2. An emergency is declared for this act.**

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